

III. REMARKS

Status of the Claims

Claim 1 is amended to clarify the nature of the movement of the locking elements as they engage the cellphone. Claims 1-10 remain under consideration.

Summary of the Office Action

Claims 1, 3, and 10 stand rejected under 35USC102(b) on the basis of the cited reference Hsu, U.S. Patent No. 5,694,468. Claims 1-10 stand rejected under 35USC103(a) on the basis of the cited reference Wijas, U.S. Patent No. 5,463,688, in view of the reference Hsu. The Examiner is respectfully requested to reconsider his rejection in view of the following remarks.

Applicant submits that the above amendment to the claims is for the purpose of placing the claims in condition for allowance or in the alternative to present claims that are in better condition for appeal. Accordingly, it is requested that the Examiner exercise his discretion and enter these amendments.

The Invention

A cellphone holder for securing a cellphone is constructed having locking elements with clamping surfaces that press against the side surfaces of the phone. The clamping surfaces are made of a soft rubber-like material having a large friction coefficient against the shell material of the phone. The phone is locked in the holder by pushing it lightly against locking surfaces at the bottom of the holder. The locking mechanism in the holder will then pivot the clamping surfaces closely against the side surfaces of the phone. The phone is released from the holder by pushing two release buttons, whereby the clamping surfaces are

forced to open to release the side surfaces of the phone. In this manner the holder secures the cellphone without the need for elements that mechanically engage the cellphone in an interlocking relation which requires customized engagement slots or surfaces on the cellphone. Accordingly, the holder need not be custom designed to fit the size and shape of a particular cellphone and the cell phone need not be constructed to provide the required interlocking elements for the holder. In the holder of this invention a wide variety of cellphone shapes and sizes can be secured without customization.

Discussion of the Cited References

The Examiner relies on the newly cited reference Hsu to support the rejection based on anticipation. Claim 1 is amended to more clearly describe the operation of the clamping mechanism of this invention. The locking elements pivot on the holder about parallel axes. This motion causes the locking elements to engage the sides of the cellphone and is actuated by downward pressure on the cellphone as it is placed in the holder. In the device of Hsu, the locking surfaces are moved only linearly (in a specific direction back and forth) as stated in the Summary of the Invention, second paragraph, as follows:

"....the radiotelephone cradle according to the present invention mainly includes two side arms capable of translating outward or inward relative to each other, a driving means formed from two crossed members, a base with two forward projected legs, and a back panel. The crossed driving means is positioned between two back plates of the side arms to engage with elongated slots formed on the back plates. Two traction springs separately and longitudinally extend between two ends of the crossed members at the same side thereof to normally pull the side arms outward for positioning the radiotelephone into the cradle. When one of the side arms is pushed inward, the two side arms move toward each other due to the linked crossed driving means, and thereby firmly hold the radiotelephone therebetween."

The arm elements of the cradle of Hsu operate in an entirely different manner to the device of this application. The arms of Hsu do not pivot, but are mounted for lateral movement against biasing springs.

The reference Wijes describes a holder for a telephone. Referring to column 8, lines 17-25 and again at column 8, lines 31-40, it is observed that the telephone is held within the holder by means of latching surfaces 132 and 142 fitting into notches 404. Additionally toe prongs 440 and 450 are molded to fit aligned rear notches 405. This requires a customized holder to fit a specific phone.

The Issue of Anticipation

It is well settled that a claim is anticipated, "only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (See CHISOLM, Federal Circuit Guide, Pg. 1221).

"...it must be shown that the reference contains all of the elements of the claims apart from irrelevant or merely extraneous variations, and the elements are arranged in the same way to achieve the same result which is asserted to be an inventive function..." 454 U.S. 1129 (1981)

The elements of the claim and their function and purpose within the claim must be reviewed in a manner similar to an infringement analysis. If the device described in the cited reference would not infringe if it was later, it will not anticipate if the reference is earlier.

Applying this standard to the device of the reference Hsu, it becomes clear that the device of this reference is missing

significant elements of independent claim 1 of this application. There is no provision in the devices of the cited references for securing the cellphone by the frictional engagement of clamping surfaces that are moved into engagement with the cellphone by pivotal motion of locking elements actuated by downward pressure on the cellphone as it is inserted in the holder. Claim 1 states:

"a pair of L-shaped locking elements mounted on said bottom part of said holder for opposing pivotal motion about parallel axis, said locking elements having flat surfaces for clamping the cellphone between said locking elements, solely by means of friction between the locking elements and the shell of the cellphone; and

wherein said pivotal motion of said locking elements are actuated by insertion of said cellphone between said locking elements and exertion of a downward force thereon."

Since this element forms no part of the device of Hsu, there would be no infringement if they were later, therefore, the cited references do not support the rejection by the Examiner based on anticipation.

The above arguments are equally applicable to the rejected independent claims 3 and 10.

The Issue of Obviousness

The Examiner has also rejected all the claims as being obvious over Wijas in view of Hsu. However, there are no pivoting locking elements taught in the reference Wijas. The reference Wijas therefore does not remedy the deficiencies of Hsu as indicated above. Further there are significant incompatible features in the teachings of documents which are obstacles to their combination. In Wijas the holder comprises rigid side walls and rigid latch members as can be seen in Figure 4. Only the latch members (140, 440) are movable. The walls of Wijas can not be made of the soft material used in Hsu (column 2 line 40). Also

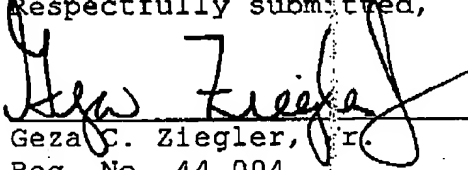
the latch members (140, 440) are defined undeniable to be short (for example column 8, lines 17 to 21). So, if the latch members are made of soft material as in Hsu, they can not hold the phone in the holder of Wijas. Their friction force to the phone's side is not enough. This is obvious when looking at Hsu, Figure 1, where very large locking surfaces are depicted. So the teachings of these two documents are not combinable as they do not have a common concept of operation, as argued by the Examiner.

According to basic tenets of patent law, in order to support an obviousness rejection, there must be some suggestion of the desirability of making the modification, aside from the subject application. The claimed invention must be considered as a whole and the references must suggest the desirability and thus the obviousness of making the modification, the references must be viewed without the benefit of hindsight. (See MPEP sections 706.02(a) and 2141. Applicant submits that the modification of the teachings of Hsu and Wijas in order to obtain the invention, as described in the amended claims submitted herein, would not have been obvious to one skilled in the art. There is no indication that such a modification would be desirable. The Examiner has failed therefore to present a prima facie issue of obviousness with respect to these claims.

In view of the remarks stated above, Applicant submits that all of the claims under consideration contain patentable subject matter and favorable action by the Examiner is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,


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